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Chapter 7 Trustee

**UNITED STATES BANKRUPTCY COURT
EASTERN DISTRICT OF CALIFORNIA
(Sacramento Division)**

In re
LUCY G. WHITTIER,
Debtor.

Case No. 08-31231-A-7

DC No.: HSM-020

Date: April 26, 2010

Time: 9:00 a.m.

Place: 501 I Street, 7th Flr.
Sacramento, CA
Dept. A, Ctrm. 28

Judge: Michael S. McManus

**TRUSTEE'S MOTION FOR ORDER AUTHORIZING
SALE OF ESTATE ASSETS FREE AND CLEAR OF LIENS**

SUSAN K. SMITH, the duly appointed Chapter 7 Trustee ("Trustee") in the pending bankruptcy case of LUCY G. WHITTIER ("Debtor"), Case No. 08-31231-A-7, files this Trustee's Motion for Order Authorizing Sale of Estate Assets Free and Clear of Liens (the "Motion"), and in support thereof represents as follows:

1. This case was commenced as a voluntary Chapter 11 case on August 12, 2008. Pre-petition, the Debtor operated a business involving the breeding, raising and selling of Arabian horses. The Debtor continued to operate her business as Debtor-in-Possession while the case was initially pending in Chapter 11.

2. The case then was converted from a Chapter 11 case to one under Chapter 7 by order dated February 24, 2009. Thomas A. Aceituno ("Aceituno") was appointed Chapter 7 Trustee on February 25, 2009.

1 3. However, the case was reconverted to one under Chapter 11, and Aceituno
2 removed as Trustee, by order dated March 24, 2009.

3 4. Subsequently, the Trustee was appointed Chapter 11 Trustee in this case,
4 effective March 25, 2009, by order dated March 27, 2009.

5 5. The case was reconverted to one under Chapter 7 at the hearing held on June
6 22, 2009. The order converting this case was filed by the court on June 23, 2009, and the
7 Trustee was appointed as the Chapter 7 Trustee on June 26, 2009.

8 6. Jurisdiction for the filing of this Motion exists pursuant to 28 U.S.C. sections 157
9 and 1334; 11 U.S.C. section 363; Federal Rule of Bankruptcy Procedure 6004; and the
10 reference to this court by the District Court for the Eastern District of California.

11 7. On July 31, 2009, the Trustee filed an Application for Order Authorizing Trustee
12 to Employ Arabian Horse Consultant and First Interim Application for Compensation and
13 Reimbursement of Expenses to Arabian Horse Consultant (the "Consultant Application"), so
14 that Greg Gallun ("Gallun"), an experienced Arabian horse trainer, could assist the Trustee in
15 the marketing and sale of certain Arabian horses belonging to the estate. On August 31, 2009,
16 the court entered an order approving the Consultant Application. Further, on August 6, 2009,
17 the Trustee filed an Application for Order Authorizing Trustee to Employ Arabian Horse Sales
18 Agent (the "Sales Agent Application"), so that Gallun Farms, Inc. ("Gallun Farms") could assist
19 the Trustee with the sales of certain Arabian horses belonging to the estate. On August 8,
20 2009, the court entered an order approving the Sales Agent Application.¹ Subsequently, on
21 March 29, 2010, the Trustee and Gallun Farms entered into a written addendum to the Sales
22 Agent Application (the "Addendum"), which added the Mares (described in paragraph 8 below)
23 to the list of horses to be covered under the Sales Agent Application.

24 8. Pre-petition, the Debtor transferred two (2) mares, named Bey Shahs Lady and
25 Genevieve C (collectively the "Mares"), to Jennifer Miller ("Miller"), the daughter of the Debtor.

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28 The Trustee respectfully requests that the court take judicial notice of the Consultant
Application and order thereon (Docket #s 162 and 225, respectively), and the Sales
Agent Application and order thereon (Docket #s 179 and 186, respectively).

1 Miller paid the Debtor the sum total of twenty thousand dollars (\$20,000.00) for the Mares, ten
2 thousand dollars (\$10,000.00) for each mare.

3 9. Set for hearing on April 26, 2010 is the Trustee's motion for an order authorizing
4 her to compromise controversies related to alleged fraudulent transfers made by the Debtor
5 pre-petition, and an unauthorized loan and transfer post-petition, and to enter into and perform
6 under a settlement reached with the transferee. Provided the compromise motion is granted,
7 the Trustee will be in a position to transfer title to the Mares to Murray Popplewell ("Buyer"),
8 or one or more other buyers approved by this court.

9 10. Long before the filing of this Motion, Gallun Farms had advised the Trustee that
10 Buyer would likely be willing to purchase the Mares if the estate ever gained legal title to the
11 Mares. Subsequently, the Buyer approached the Debtor about the availability of the Mares.
12 Thereafter, the Debtor informed the Trustee of the Buyer's offer for the Mares. The Trustee
13 then contacted Buyer regarding his offer to purchase the Mares.

14 11. The Trustee and Buyer have verbally agreed to the terms and conditions for the
15 purchase and sale of the Mares (the "Purchase Agreement"). The parties anticipate entering
16 into written Horse Bills of Sale in connection with the consummation of the sales. The material
17 terms of the Purchase Agreement are as follows:

18 a. Provided Buyer is the successful buyer of Bey Shahs Lady at the
19 conclusion of the hearing on this Motion, Buyer will pay the estate the sum of \$50,000.00 for
20 Bey Shahs Lady ("Bey Purchase Price") and, should Buyer be the successful buyer of
21 Genevieve C at the conclusion of the hearing on this Motion, Buyer will pay the estate the sum
22 of \$30,000.00 for Genevieve C ("Genevieve Purchase Price"). Said payment(s) shall be made
23 no later 5:00 p.m. PDT April 28, 2010, by cashier's check or money order made payable to
24 "Susan K. Smith, Chapter 7 Trustee of the Lucy G. Whittier, Bankruptcy Estate," or by wire
25 transfer through arrangements with the Trustee;

26 b. The Trustee, on behalf of the estate, will sell to Buyer all of the estate's
27 interest in Bey Shahs Lady and Genevieve C , free and clear of liens, as set forth in greater
28 detail below;

1 c. Buyer shall deliver to the Trustee two non-refundable deposits (the "Bey
2 Deposit" and the "Genevieve Deposit," and collectively the "Non-Refundable Deposits"), in the
3 amounts of ten percent (10%) of the Bey Purchase Price and ten percent (10%) of the
4 Genevieve Purchase Price, receipt of which is acknowledged by the Trustee. Should the
5 Buyer, as the successful buyer of one or both of the Mares, or other successful overbidder who
6 has provided the required Non-Refundable Deposit(s) to the Trustee as set forth in this Motion,
7 fail to consummate the sale(s) or otherwise breach his, her or its obligations and/or covenants
8 to the Trustee / estate, the Non-Refundable Deposits shall be nonrefundable.

9 d. The Trustee, on behalf of the estate, will cause this Motion and all papers
10 related thereto to be filed and served and request that the Court hear this Motion on April 26,
11 2010;

12 e. The sales of both Bey Shahs Lady and Genevieve C will be on an "as is,"
13 "where is," basis, with no representations or warranties, express or implied, with respect to
14 such Mares;

15 f. The sales of Bey Shahs Lady and Genevieve C are subject to
16 overbidding. The Trustee proposes that the initial overbid for Bey Shahs Lady be \$50,500.00
17 and that the initial overbid for Genevieve C be \$30,500.00, with subsequent overbids, if any,
18 in increments of \$500.00;

19 g. The Bey Deposit shall be returned to Buyer if this Motion is denied, or if
20 Buyer is not the highest bidder on Bey Shahs Lady at the hearing. Similarly, the Genevieve
21 Deposit shall be returned to Buyer if this Motion is denied, or if Buyer is not the highest bidder
22 on Genevieve C at the hearing on the Motion;

23 h. If there is no overbidding for Bey Shahs Lady and Genevieve C at the
24 hearing on this Motion, or if Buyer is the highest bidder on Bey Shahs Lady and Genevieve C
25 at the hearing on the Motion, or if the highest bidder for Bey Shahs Lady and Genevieve C at
26 the hearing on this Motion fails to pay for Bey Shahs Lady or Genevieve C by the deadline set
27 forth in paragraph 13 below, and Buyer wishes to proceed to purchase Bey Shahs Lady and
28 Genevieve C, the Non-Refundable Deposit(s) shall be applied to the Purchase Price or the

1 highest price bid by Buyer at the hearing on the Motion, whichever is greater; and,

2 i. The proposed sale of Bey Shahs Lady and Genevieve C and the Purchase
3 Agreement are subject to bankruptcy court approval through the granting of this Motion.

4 12. The Trustee is informed and believes that the United States Internal Revenue
5 Service (the "Service") has a perfected lien on the Mares, securing a pre-petition tax obligation
6 of approximately \$800,000.00. The Trustee is informed and believes that the Service has the
7 only security interest in the Mares. The Trustee anticipates obtaining the consent of the
8 Service to the sale of the Mares free and clear of its lien, with its lien attaching to the proceeds
9 of the sale in the same priority and to the same extent and validity as the Service's lien existed
10 pre-petition (subject to the Service's ongoing agreement for a "carve-out" of the allowed
11 administrative expenses of the Trustee and her professionals). Therefore, the Mares should
12 be sold pursuant to this Motion free and clear of the Service's lien pursuant to 11 U.S.C. §
13 363(f)(2).

14 13. The Trustee proposes that any persons or entities wishing to bid on the Mares
15 be required to first become a qualified overbidder ("Qualified Overbidder") in the manner set
16 forth below, prior to the commencement of the hearing on the Motion. Any person or entity
17 wishing to become a Qualified Overbidder must deliver to the Trustee a non-refundable deposit
18 in the amount of \$5,050.00 for Bey Shahs Lady and \$3,050.00 for Genevieve C (ten percent
19 (10%) of the purchase price for each mare plus the initial overbid increment) (the "Overbidder
20 Deposit"), in the form of a cashier's check or money order made payable to Susan K. Smith,
21 Chapter 7 Trustee of the Lucy G. Whittier, Bankruptcy Estate." If Buyer is the high bidder, he
22 shall pay his high bid for the estate's interest in one or both of the Mares. In the event that a
23 third party outbids Buyer for one or both of the Mares, and is the court-approved buyer for one
24 or both Mares, and the Trustee receives full payment for same by 5:00 p.m. PDT on April 28,
25 2010, or at such other time as the court may provide, the Purchase Agreement with Buyer shall
26 be of no further effect. The third party high bidder(s) must purchase the Mares on the identical
27 terms as set forth in the Purchase Agreement, subject to any modifications ordered by the
28 court. If full payment from the high bidder(s) is not timely received, and Buyer elects to be

9 15. Pursuant to the Sales Agent Application, Gallun Farms is entitled, subject to this
10 court's approval, to compensation of twenty percent (20%) of the gross sale price of each of
11 the Mares. In the event that a third party outbids Buyer for one or both of the Mares, Gallun
12 Farms' commission totaling twenty percent (20%) of the gross sale price of each of the Mares,
13 shall be divided equally between Gallun Farms and the sales agent(s), if there are any, who
14 represent(s) the third party high bidder(s). The Trustee requests that the court approve and
15 authorize the payment of commissions, in accordance with this Motion and the court's order
16 thereon, following the Trustee's receipt of the sales proceeds from Buyer or such other buyers
17 as may be approved by the court.

16. The overbidding aspect of the hearing is designed to ensure that parties interested in paying more for the Mares are given an opportunity to do so. Under the circumstances, the Trustee submits that the sale of the Mares on the terms outlined in this Motion is in the best interests of the estate and its creditors.

17. Finally, given the prompt closings of the sale(s) of the Mares proposed in the Motion, and since it is in the best interests of the estate and its creditors for the proposed sale(s) to be consummated as quickly as possible, the Trustee requests that the 14-day stay provided for in Rule 6004(h) of the Federal Rules of Bankruptcy Procedure be waived.

26 **WHEREFORE**, the Trustee, respectfully requests the Court enter an order authorizing
27 the sale of the Mares: 1) pursuant to the terms of the Purchase Agreement, or as otherwise
28 ordered by the Court, subject to the above-described overbidding procedures, free and clear

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